

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
Truth-in-Billing)
and)
Billing Format)

CC Docket No. 98-170

Petition for Temporary, Limited Waiver

LaHarpe Telephone Company, Inc. ("LaHarpe"),¹ by counsel, hereby seeks temporary, limited waiver of the Truth-in-Billing ("TIB") requirements established by the Federal Communications Commission ("Commission" or "FCC") in its First Report and Order and Further Notice of Proposed Rulemaking in the above-captioned matter.² Specifically, LaHarpe seeks temporary waiver of the requirements of Section 64.2401(a)(2) regarding separating charges by service provider (the "TIB Separate Provider Requirement") and Section 64.2401(d) regarding disclosure of inquiry contacts (the "TIB Inquiry Contact Requirement")(collectively, the "TIB Requirements").³ LaHarpe seeks this waiver until April 1, 2000 because it is

¹ Attachment A contains the declaration of Todd Irish, General Manager of LaHarpe. The declaration bears a facsimile signature. The original signed declaration will be filed upon receipt by counsel.

² In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 99-72, released May 11, 1999, 64 Fed. Reg. 34488 (June 25, 1999)("TIB Order"); Errata, CC Docket No. 98-170, DA 99-2092, released October 6, 1999.

³ In pertinent part, 47 C.F.R. § 64.2401(a)(2) states that "[w]here charges for two or more carriers appear on the same telephone bill, the charges must be separated by service provider. . . ." 47 C.F.R. § 64.2401(d) states, in turn, that:

Telephone bills must contain clear and conspicuous disclosure of any information that the customer may need to make inquiries about, or contest charges, on the

(Footnote Continued on Next Page)

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technically incapable of rendering a bill that complies with the TIB Requirements by their November 12, 1999 effective date.⁴ Moreover, because it has terminated its billing service contracts with casual calling and alternate service providers (collectively referred to as "AOS providers"), i.e., carriers other than the presubscribed "1+" carrier of the customer, a grant of this waiver would allow LaHarpe to expend the necessary resources for TIB compliance for only those billing services that it provides after April 1, 2000.⁵

Further, LaHarpe, which is a member of the United States Telecom Association ("USTA"), recognizes that a pending Petition filed by USTA seeks similar relief for USTA member companies.⁶ Moreover, LaHarpe recognizes that a pending Joint Petition filed by the National Exchange Carrier Association, Inc., the National Telephone Cooperative Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, Inc. (collectively the "Associations") also seeks similar relief for their member companies. Accordingly, in the event that action on the USTA Petition and/or the Associations'

(Footnote Continued from Previous Page)

bill. Common carriers must prominently display on each bill a toll-free number or numbers by which customers may inquire or dispute any charge contained on the bill. A carrier may list a toll-free number for a billing agent, clearinghouse, or other third party, provided that such party possesses sufficient information to answer questions concerning the customer's account and is fully authorized to resolve consumer complaints on the carrier's behalf. Each carrier must make its business address available upon request to consumers through its toll-free number.

⁴ See 64 Fed. Reg. 55163 (Oct. 12, 1999); see also Public Notice, DA 99-2030 (Sept. 30, 1999) and Public Notice, DA 99-1789 (Sept. 2, 1999).

⁵ LaHarpe recognizes that if it decides to provide billing services for AOS providers in the future, compliance with the TIB Requirements would be necessary.

⁶ See Public Notice, DA 99-1616, released August 13, 1999.

Petition does not grant the extent of the relief requested herein, LaHarpe requests a waiver of the TIB Requirements until April 1, 2000.

Until the requested waiver expires, however, LaHarpe's customer representatives will continue to provide assistance to customers with questions concerning charges from particular carriers. LaHarpe respectfully submits that these actions will ensure that the underlying public interest objectives of the TIB Requirements will be advanced during the time that the requested waiver is necessary and in effect.

I. Background

LaHarpe provides exchange and exchange access services to approximately 1,140 lines in Illinois. LaHarpe is a rural telephone company under the Communications Act of 1934, as amended. LaHarpe uses Communications Data Group ("CDG") as its billing vendor. In May, 1999, after the release by the FCC of its TIB Order, LaHarpe became aware of the various TIB requirements and anticipated relying upon CDG for the necessary software upgrades required by LaHarpe for TIB compliance. LaHarpe is concentrating its efforts on Year 2000 issues.

On November 3, 1999, CDG informed LaHarpe that compliance with the TIB Requirements would be an issue. As soon as this information was received, LaHarpe immediately investigated with CDG what specific TIB issues needed to be addressed, and what billing system software upgrades were required for compliance with the TIB Requirements. An estimated delivery date for the necessary software will, according to CDG, be provided soon. Once these upgrades are received, LaHarpe will then undertake appropriate testing to ensure that such compliance is achieved. However, because of the need to comply with other TIB rules by

April 1, 2000,⁷ LaHarpe also requests a waiver until that date to comply with the TIB Requirements.⁸ As explained below, the practical problems and existing billing software system limitations confronting LaHarpe associated with implementing the TIB Requirements make compliance infeasible by November 12, 1999.

The need for this waiver arises in two instances. First, LaHarpe requests a waiver of the TIB Requirements as a result of the billing services that LaHarpe provides to AOS providers. Specifically, LaHarpe receives data from the AOS provider's clearinghouse, which, in turn, are aggregated in one section of LaHarpe's end user bill. This bill section may identify one or, at times, several different AOS providers based on the customer's decision to make a casual call or to use an alternative service provider in a given billing cycle. The charges that LaHarpe receives are sorted by customer and by date and time of that customer's usage. LaHarpe's existing billing system software does not, however, sort these call records by AOS provider where the records involve a "sub-CIC"⁹ of that provider.¹⁰ In addition, LaHarpe's existing software is not capable of placing the name of such an AOS provider or its toll free number on

⁷ See n.4, supra.

⁸ LaHarpe will supplement this filing once CDG confirms a delivery date for the software required by LaHarpe to comply with the TIB Requirements.

⁹ A "CIC" is the Carrier Identification Code assigned to a specific carrier. The use of "sub-CICs" allows other providers to share the CIC.

¹⁰ As a result of the cancellation of its AOS billing contracts (see infra), LaHarpe anticipates that the instances where AOS service provider charges appear on a bill rendered by LaHarpe should be declining and the billed charges should otherwise continue to be minimal. For example, LaHarpe billed only approximately six hundred dollars (\$600.00) for AOS providers in its November billing cycle.

the bill.¹¹ Accordingly, LaHarpe's existing software would require modifications to accommodate varying levels of screening and identification of an AOS provider, and to provide for the name and contact number of the AOS provider. These demands would, in turn, affect the processing time associated with rendering the bill.

Moreover, in September, 1999, LaHarpe terminated its billing service contracts that it held with AOS providers. This termination is effective December 31, 1999. In order to fulfill its obligations under such contracts, however, LaHarpe anticipates that a minimal number of calls from AOS providers may continue to be provided via its clearinghouse for billing by LaHarpe through its January, 2000 billing cycle. As a result of LaHarpe's anticipation that the delivery and testing of all necessary software by CDG would be completed after January, 2000, the software modifications that LaHarpe would otherwise need in order to comply with the TIB Requirements arising from its AOS provider billing would be unnecessary since its obligations with respect to such billing would have been fulfilled.

Second, LaHarpe also seeks a waiver of TIB Separate Provider Requirement in light of its billing for non-recurring charges and credits for other carriers. LaHarpe's existing billing system currently aggregates all non-recurring charges and credits in the local section of its bill. However, because LaHarpe provides "1+" billing and collection services for carriers, these carriers' non-recurring charges and credits are printed in the same section of the bill as the non-recurring charges and credits for local services offered by LaHarpe. LaHarpe notes, however,

¹¹ Although LaHarpe typically has the authority to issue credits to customers for AOS charges, the AOS providers may, independently, seek payment of those charges from customers. Moreover, LaHarpe notes that it is not "fully authorized to resolve consumer complaints on the carrier's behalf." 47 C.F.R. § 64.2401(d). In LaHarpe's experience, however, customer inquiries regarding AOS provider charges are minimal.

that each such charge and credit is labeled by carrier, and that customer inquiries concerning such charges have been minimal. As with the billing system modifications required to comply with the TIB Requirements with respect to AOS provider billing, LaHarpe is technically incapable of placing other carrier's non-recurring charges and credits in their respective section of the bill by November 12, 1999 as required by the TIB Separate Provider Requirement.¹²

II. Good Cause Exists for and the Public Interest will be Served by a Grant of this Limited Waiver

Based on these facts and circumstances, LaHarpe respectfully submits that good cause exists for a grant of this limited waiver, and that the public interest will be served by such action. As demonstrated herein, LaHarpe's software vendor will not be able to develop the necessary software required to meet the TIB Requirements by November 12, 1999. Moreover, even assuming the availability of the software upgrades, LaHarpe would not be able to successfully test such upgrades by this date. LaHarpe anticipates, however, that compliance with the TIB Requirements should be possible by April 1, 2000. Moreover, LaHarpe anticipates that the software necessary for LaHarpe to install in order to comply with the TIB Requirements for its AOS provider billing will not be developed and tested until there is no longer a need for such compliance. Accordingly, for the reasons stated, good cause exists for this waiver.¹³

¹² See TIB Order at para. 31.

¹³ "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative. Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

LaHarpe also respectfully submits that the public interest would be served by grant of this request. First, the Commission has recognized the need to balance the implementation of new regulatory directives which affect computerized systems with on-going Year 2000 activities.¹⁴ The software changes which would be required by LaHarpe by November 12, 1999 clearly fall into this Commission-defined category. The Commission's concerns regarding utilization of its Year 2000 Policy Statement to "'forestall' or 'roll back' disfavored regulations, or use this policy for purposes of competitive advantage"¹⁵ are not applicable here. LaHarpe seeks only a waiver that is otherwise consistent with the underlying objectives which justified the Commission-prescribed compliance date of certain other TIB rules. Accordingly, there is no basis to conclude that LaHarpe is attempting to "forestall" or "roll back" disfavored regulations. In addition, there is no "competitive advantage" associated with this request. A grant of this waiver does not affect a competitor of the LaHarpe; rather it allows an interim measure to be implemented that, for a limited period of time, allows continuation of existing billing arrangements in a manner consistent with the status of the overall TIB compliance efforts by LaHarpe.

Second, the Commission has already recognized that certain aspects of the TIB implementation process require a blanket waiver for all companies.¹⁶ Consistent with the underlying rationale of that waiver, LaHarpe's request will help promote efficiency by allowing

¹⁴ See In the Matter of Minimizing Regulatory and Information Technology Requirements That Could Adversely Affect Progress Fixing the Year 2000 Date Conversion Problem, Year 2000 Network Stabilization Policy Statement, FCC 99-272, released October 4, 1999 ("Year 2000 Policy Statement") at para. 15.

¹⁵ Id. at para. 16.

¹⁶ See n.4, supra.

it to avoid incurring unnecessary expense for billing system capabilities that LaHarpe would not need in light of its cancellation of its AOS provider billing contracts. In addition, a grant of this request will permit LaHarpe to implement the TIB Requirements for other carriers' non-recurring charges and credits in conjunction with all other TIB rules.

Finally, the underlying goal of the TIB Requirements -- the ability of a customer to identify a carrier and make inquiry concerning a charge -- would not be frustrated by a grant of the requested waiver. As is done today, LaHarpe will continue to provide its local telephone number on the bill in order to allow customers to contact LaHarpe about charges. Likewise, when a customer questions an AOS provider charge, LaHarpe will, at the customer's option, provide the AOS provider's toll free number or will seek to establish a three-way conference call with the AOS provider (or its billing clearinghouse) in order that the customer may address his/her concern about a charge. Accordingly, the goal of the TIB Requirements will be advanced. Waiver of the TIB Requirements as requested herein will merely maintain the status quo until such time as all necessary billing systems modifications are made and tested.

Even assuming that harm to the public interest is present, that harm does not outweigh the public interest benefits arising from a grant of this request. As indicated, LaHarpe's customer concerns over AOS provider charges and carriers' non-recurring charges and credits have been minimal. Moreover, LaHarpe anticipates that its experience will not change during the time that the requested waiver is in place.

III. Conclusion

Because LaHarpe is technically incapable of complying with the TIB Requirements by November 12, 1999, a grant of this request until April 1, 2000 should ensure that LaHarpe can


implement and successfully test the billing system software upgrades required to implement the TIB Requirements in an efficient manner, while avoiding unnecessary expense or raising additional Year 2000 compliance issues. Moreover, a grant of this request will ensure that LaHarpe will only be required to expend the necessary resources for TIB compliance with respect to those billing services that it provides after the termination date of its AOS billing contracts. At the same time, the consumer goals of the TIB Requirements will not be frustrated by a grant of this request. Rather, such goals will be furthered by LaHarpe as its continues to provide customer assistance and responsiveness when questions are received regarding charges from particular carriers.

Accordingly, in the event that action on the USTA Petition and/or the Associations' Petition does not grant the extent of the relief requested herein, LaHarpe requests a waiver of the requirements of 47 C.F.R. §§ 64.2401(a)(2) and 64.2401(d) until April 1, 2000.

Respectfully submitted,

LaHarpe Telephone Company

By


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Its Attorneys


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November 8, 1999

**Declaration of Todd Irish
General Manager of
LaHarpe Telephone Company, Inc.**

I, Todd Irish, General Manager of LaHarpe Telephone Company, Inc. ("LaHarpe"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Temporary, Limited Waiver" and the information contained therein regarding LaHarpe is true and accurate to the best of my knowledge, information, and belief.

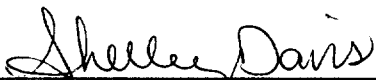
Date 11/6/99



Todd Irish
General Manager

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Petition for Temporary, Limited Waiver" of LaHarpe Telephone Company, Inc. was served on this 8th day of November, 1999 by hand delivery to the following parties:



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